

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
 . 4:09-CR-122-Y  
V. .  
 .  
SALVADOR MANUEL GARCIA- . Fort Worth, Texas  
COVARRUBIAS . May 17, 2010  
. . . . .

TRANSCRIPT OF PROCEEDINGS  
(Sentencing Hearing)  
BEFORE THE HONORABLE TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MR. JOSHUA T. BURGESS  
United States Attorney's Office  
801 Cherry Street, Suite 1700  
Fort Worth, Texas 76102-6897  
(817) 252-5200

For the Defendant: MR. J. STEVEN BUSH  
Attorney at Law  
Western Union Building  
314 Main Street, Suite 200  
Fort Worth, Texas 76102  
(817) 878-2770

Court Reporter: MS. ANA P. WARREN  
U.S. District Court Reporter  
501 W. 10th Street, Room 201  
Fort Worth, Texas 76102-3637  
(817) 850-6681

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

P R O C E E D I N G S

(Commencing, 11:00 a.m.)

THE COURT: Next before the Court is the sentencing of Salvador Manuel Garcia-Covarrubias, Cause Number 4:09-CR-122-Y-(2),

Let the record reflect that Mr. Garcia is being assisted with translation from English into Spanish and Spanish into English by Mr. Mike Mahler, a certified court translator, who has previously been sworn.

Are the parties ready to proceed?

MR. BURGESS: Yes, Your Honor.

MR. BUSH: Yes, Your Honor.

THE COURT: Mr. Garcia, would you please acknowledge your presence in court for the record by stating your full name?

DEFENDANT GARCIA: Salvador Manuel Garcia-Covarrubias.

THE COURT: Mr. Garcia, you appeared before the Court on January 25, 2010, at which time you entered a plea of guilty to Count 1 of the indictment charging you with possession of a controlled substance with intent to distribute, in violation of 21, United States Code, Section 841(a)(1) and (b)(1)(B). On that date, I found that your plea of guilty was a knowing and voluntary plea supported by an independent basis in fact containing each of the essential

1 elements of the offense. You told me at that time that you  
2 understood the elements of the offense, agreed to the accuracy  
3 of the factual resume, and admitted that you committed all  
4 essential elements of the offense. Consequently, I accepted  
5 your plea and adjudged you guilty of the crime alleged in the  
6 indictment.

7 Mr. Bush, did you and your client receive in a timely  
8 manner a copy of the presentence investigation report and the  
9 addendum to the report?

10 MR. BUSH: We did, Your Honor.

11 THE COURT: And did you have an opportunity to review  
12 those carefully with Mr. Garcia?

13 MR. BUSH: Yes, sir.

14 THE COURT: Did the government receive those timely?

15 MR. BURGESS: Yes, Your Honor

16 THE COURT: Then I will now notify the parties of my  
17 tentative findings as to the defendant's objections to the  
18 presentence report and the government's objections to the  
19 presentence report.

20 The government's objection as to obstruction of justice is  
21 moot having been accepted by the probation officer in her  
22 addendum to the presentence report.

23 The second objection is overruled because the defendant  
24 pled guilty and thereby accepted responsibility for his  
25 criminal behavior after he obstructed justice at his

1 suppression hearing.

2 To encourage acceptance of responsibility and the disposal  
3 of criminal cases by plea agreements, it is my practice to  
4 grant the acceptance of responsibility reduction unless there  
5 is conduct inconsistent with acceptance after the entry of a  
6 guilty plea by the defendant.

7 The defendant's objection to being held accountable for  
8 six kilograms of cocaine is overruled for the reasons set out  
9 in the addendum and the government's response.

10 Does the government have any objection and/or evidence  
11 relating to my tentative findings?

12 MR. BURGESS: No, Your Honor. Thank you.

13 THE COURT: Does the defendant?

14 MR. BUSH: We have no additional evidence, Your  
15 Honor.

16 THE COURT: Then I adopt as my final findings of fact  
17 the statements of fact made in the presentence report, subject  
18 to and including changes and qualifications made by the  
19 addendum and that I made in response to the objections.

20 After having considered the conclusions expressed by the  
21 probation officer in the presentence report as to the  
22 appropriate guideline calculations and after having considered  
23 objections, I determine that the appropriate guideline  
24 calculations are:

25 Total offense level 32. Criminal History Category I.

1 Imprisonment range 121 to 151 months. Supervised release  
2 range four to five years, and a fine range of \$17,500 to \$2  
3 million, plus the cost of imprisonment and supervision.

4 Mr. Bush, I intend to sentence your client at the bottom  
5 of the guideline range that I have determined to be  
6 appropriate. Do you, nevertheless, wish to make any remarks  
7 on his behalf?

8 MR. BUSH: No, I do not. I will have a formal  
9 objection to the sentence, but that hasn't happened yet,  
10 though.

11 THE COURT: That's right.

12 Okay. Mr. Garcia, do you wish to speak on your own behalf  
13 or present any information in mitigation of your sentence?

14 DEFENDANT GARCIA: I would just like to ask for  
15 forgiveness for what I have done and ask forgiveness of  
16 everyone and my family for leaving my son alone. And I would  
17 like you to give me an opportunity to be a father to my  
18 children.

19 THE COURT: All right, sir. Thank you.

20 Does the government wish to be heard?

21 MR. BURGESS: No, Your Honor. Thank you.

22 THE COURT: Then I'll now state the sentence,  
23 determined pursuant to Title 18, United States Code, Section  
24 3553(a), treating the sentencing guidelines issued by the  
25 sentencing commission as advisory only under U.S. v. Booker.

1 In arriving at a reasonable sentence, I've taken into  
2 account primarily the conduct admitted by Mr. Garcia in his  
3 factual resume and those matters required to be considered by  
4 Section 3553(a).

5 The attorneys will have a final chance to make legal  
6 objections before sentence is finally imposed.

7 It is the judgment of the Court that the defendant,  
8 Salvador Manuel Garcia-Covarrubias, in Cause Number  
9 4:09-CR-122-Y-(02), be committed to the custody of the Federal  
10 Bureau of Prisons for a period of 121 months. Restitution is  
11 not ordered because there is no victim other than society at  
12 large. I do not order a fine or cost of incarceration because  
13 Mr. Garcia does not have the financial resources or future  
14 earning capacity to pay a fine or cost of incarceration.

15 Upon release from imprisonment, Mr. Garcia shall be on  
16 supervised release for a term of four years. Pursuant to 18,  
17 United States Code, Section 3583(d), as a condition of  
18 supervised release upon the completion of the sentence of  
19 imprisonment, Mr. Garcia shall be surrendered by the Bureau of  
20 Prisons to a duly authorized immigration official for  
21 deportation in accordance with the established procedures  
22 provided by the Immigration and Nationality Act, 8, United  
23 States Code, Sections 1101 and following.

24 As a condition of supervised release, if ordered deported,  
25 he shall remain outside the United States. In the event he is

1 not deported immediately upon release or should he ever be  
2 within the United States during any portion of the term of  
3 supervised release, he shall also comply with the standard  
4 conditions recommended by the sentencing commission and comply  
5 with certain additional conditions.

6 Did you have a chance to review those with him, those  
7 additional conditions?

8 MR. BUSH: Yes. He's signed the order setting  
9 additional terms of supervised release.

10 THE COURT: All right. If you will hand that  
11 forward, please, sir.

12 Those additional conditions have been set out in a  
13 separate order signed by me this day and offered to Mr. Garcia  
14 for his review and signature, and he has now returned that to  
15 me with his signature indicating his receipt of those  
16 additional terms, his understanding of them, and his waiver of  
17 having them read here in open court. In addition, he is  
18 ordered to pay a mandatory special assessment of \$100.

19 In determining the sentence, I have considered the  
20 advisory guidelines as well as statutory directives listed in  
21 18, USC, Section 3553(a). This sentence is within the  
22 guideline range, and that range exceeded 24 months. I  
23 selected a sentence of 121 months, which is at the bottom of  
24 the advisory guideline range, because that sentence is  
25 sufficient to achieve the Court's sentencing objectives and

1 the objectives of 18, USC, Section 3553(a).

2 I have now stated the sentence and the reasons.

3 Therefore, I call upon the parties to indicate any legal  
4 reason why sentence may not be imposed as stated.

5 MR. BURGESS: Not from the United States, Your Honor.

6 MR. BUSH: Objection Number 1 would be that if it  
7 should develop that the co-defendants in this case are  
8 attributed with a quantity of less than six kilograms of  
9 drugs, that would be an additional reason for me to object to  
10 the guideline application in this case, and I would do so for  
11 appellate purposes.

12 My understanding was that Mr. Gaona and Ms. Morales were  
13 to have been sentenced today, but in speaking briefly with the  
14 U.S. Attorney and probation, it appears that they are not on  
15 the schedule for today. So my client is the first of the  
16 three defendants, as I understand it, that's being sentenced  
17 because I don't have information available to me about what  
18 quantity might be attributable to them at this time.

19 Objection Number 2 is that I believe the sentence under  
20 the statutory sentencing factors is unreasonable, and I would  
21 use that as the basis for any appeal that might be filed on  
22 behalf --

23 THE COURT: I will tell you this. If they are held  
24 accountable for less than six kilograms, it would be because  
25 they have presented a case to rebut that they were capable of



1 producing six kilograms and to do so in such a way as to  
2 convince me to hold them accountable for less.

3 Your objection is overruled. Both of your objections are  
4 overruled. Sentence is imposed as stated.

5 Did you have something, sir?

6 MR. BURGESS: Your Honor, I don't -- as he was  
7 speaking, I began to think that maybe Morales has been  
8 sentenced. I don't know if the Court -- I didn't bring that  
9 file with me. I thought that she had a reduction of sentence  
10 pursuant to 5K1 --

11 THE COURT: Does anybody know if Morales has been  
12 sentenced?

13 THE PROBATION OFFICER: According to the report, it  
14 was scheduled for April 19, I believe, but I don't know.

15 MR. BURGESS: I think she was, Your Honor. I don't  
16 know remember if the Court made a finding --

17 THE COURT: I remember a Morales, but I don't know if  
18 it was this Morales.

19 MR. BURGESS: I believe it was. I think Matt Belcher  
20 was the attorney. I just wanted to make it clear on the  
21 record that I think she may have been sentenced. I don't know  
22 that the Court made a find as to the kilograms, but I know  
23 that there was a 5K motion in place that may have resulted in  
24 a lower sentence. So it may become a moot point for purposes  
25 of sentencing. I just wanted to clarify.

1 MR. BUSH: I can understand why a sentence might be  
2 different based on 5K1 or obstruction of justice if that  
3 wasn't applicable or an additional third level or pleading  
4 guilty earlier. My objection wouldn't go to those issues.  
5 They have to do specifically with quantity.

6 THE COURT: Thank you, sir.

7 Sentence is imposed as stated.

8 I'm handed a note that I bet you had him sign a notice of  
9 right of appeal for him, if you will hand that forward,  
10 please.

11 You do have the right to appeal, Mr. Garcia, the sentence,  
12 that is, and if you decide to appeal, you have the right to be  
13 appointed an attorney to represent you on appeal if you are  
14 not able to pay the cost of an attorney for the appeal.

15 Do you have any questions, sir?

16 DEFENDANT GARCIA: No.

17 THE COURT: You're remanded to the custody of the  
18 United States Marshal. Good luck to you.

19 Thank you, Mr. Bush.

20 (End of proceedings, 11:10 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, and that the transcript was prepared by me and under my supervision.

s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
U.S. District Court Reporter

July 27, 2010  
Date

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